No. 126645

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- DONALD LEIB, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-17-0837. There on appeal from the Circuit Court of Cook County, Illinois , No. 15 CR 17207. Honorable Kerry M. Kennedy, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

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NATURE OF THE CASE

Following a bench trial, Donald Leib was convicted of knowingly being present as a child sex offender on real property comprising any school. The trial court sentenced him to 12 months in prison.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUES PRESENTED FOR REVIEW

I. Whether a parking lot that does not contain a school and is not contiguous to a school, but is at times used by a school though separated from that school by an intervening tract of land, constitutes "real property comprising any school" under 720 ILCS 5/11-9.3(a).

II. Did the State prove beyond a reasonable doubt that Donald Leib knew he was on real property comprising a school when he attended a parish festival with his family on a Saturday evening in a parking lot across the street from a parish church and school, the lot did not contain any signs indicating its use by a school, and Leib had been compliant with Illinois's sex offender registration laws for eight years?

STATUTE INVOLVED

720 ILCS 5/11-9.3: Presence within school zone by child sex offenders prohibited; approaching, contacting, residing with, or communicating within certain places by child sex offenders prohibited.

Relevant sections:

Section (a) provides, in relevant part, that:

> (a) It is unlawful for a child sex offender to knowingly be present in any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity when persons under the age of 18 are present in the building, on the grounds or in the conveyance... .

Section (d)(15) indicates that, for purposes of section 5/11-9.3:

> "School" means a public or private preschool or elementary or secondary school.

STATEMENT OF FACTS

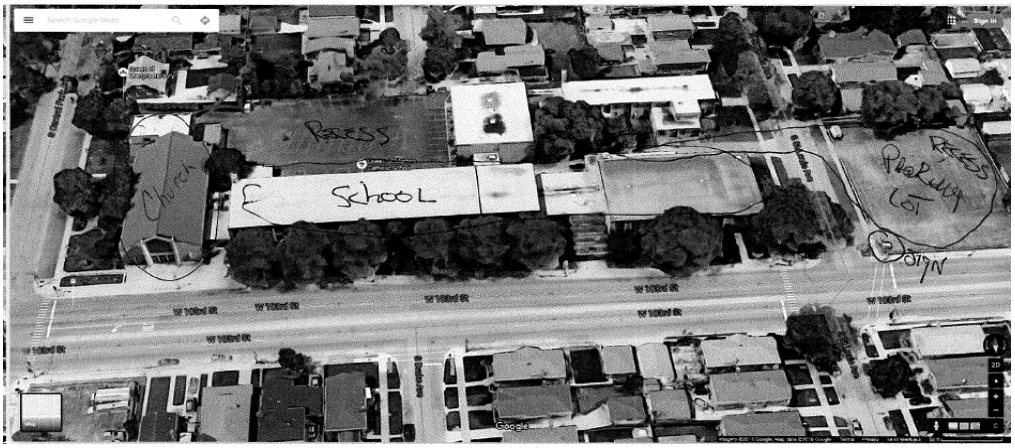
In 2007, Donald Leib ("Leib") was convicted of an offense that required him to register as a child sex offender. (R. K74-75) At trial, the parties stipulated that, for eight years following that conviction, Leib consistently registered properly pursuant to his sex offender requirements. (R. K75, L113-14, 25) On Saturday evening, September 26, 2015, Leib's older brother, Robert Leib ("Robert"), invited Leib to attend Queen of Martyrs Fest with Robert and his family, in Evergreen Park. (R. K88-89) The family attended the festival in a parking lot across a public street from Queen of Martyrs parish campus, which contained a church, school, and gym. (R. K10-11, 14, 52-53, 90) When one of Leib's neighbors saw him at the festival, she notified a police officer, and Leib left without incident. (R. K49-50, 55-56, 67-69) The same neighbor filed a complaint the next day, and the State charged Leib with having been knowingly present as a child sex offender on real property comprising a school, when persons under the age of 18 were present. (C. 21; R. K58)

At a bench trial, the defense called Robert Pellegrini, the organizer of Queen of Martyrs Fest. (R. K83-84) Pellegrini explained that the festival was a fundraiser for the entire parish. (R. K85) He identified the following exhibit, Defense Exhibit 1, as the front and back of the flyer used to advertise the festival. (R. K85)

Nothing on the flyer indicated that the festival had a school-related purpose or was presented by a school. (R. K85)

Three witnesses described the layout of the Queen of Martyrs Parish property, including: defense witness Irene Ahern Smith, the parish business manager for 20 years (R. K99); State witness Reverend Edward Mikolajcyzk, the parish pastor (R. K9-10); and State witness Kathleen Tomaszewski, the principal of Queen of Martyrs school. (R. K30) Through these witnesses, it was established that Queen of Martyrs occupied property "from 103rd and Kedzie to 103rd and Pulaski, from 99th Street to 107th Street." (R. K9-10, 14) The property was owned by a corporation run by the Bishop of Chicago. (R. K14) The parish included a church, a school for pre-school through eighth grade, and a gym. (R. K25-27) The church and the school had the same federal ID number. (R. K25-27, 103) The church was located on the corner of 103rd Street and Central Park Avenue; the school was adjacent to the church, located at 3550 West 103rd Street; and the gym, named Queen of Martyrs John Vitha Hall, was located on the other side of the school at 103rd and St. Louis Avenue. (R. K10, 17, 93) The parish also used a parking lot across the street from the gym where Leib attended the festival for various purposes, including church overflow parking, school drop-off and pick-up, occasional recess, and as parking for adult Bingo games and local leagues who used the gym for athletic functions. (R. K18-20, 25-27, 32-33, 42, 101-02) That parking lot was located on the other side of St. Louis Avenue, a public street that contained a traffic light. (R. K25-27)

The photograph on the next page, Defense Exhibit 2, depicts the parish property and parking lot at issue. Reverend Mikolajcyzk wrote the words "church," "school," and "parking lot," respectively on those three locations (R. K15-17, 101-02):



The State also presented the following photograph, People's Exhibit 1, depicting a closer view of St. Louis Avenue at 103rd Street, which shows the gym on one side of St. Louis Avenue and the parking lot on the other (R. K44-45):

A closer view of the sign on the parking lot is shown in Defense Exhibit 5 (R. K41-42, 93):

Reverend Mikolajcyzk testified that the parking lot with the Bingo sign was both church and school property. (R. K25-27) Smith testified the parking lot had been considered church property as long as she had worked there. (R. K103)

On the weekend of September 25 through 27, 2015, the parish hosted Queen of Martyrs Fest to benefit the church and school. (R. K30) The festival included music, beer, food, and carnival rides. (R. K32, 36, 101-02) That weekend, St. Louis Avenue was blocked off for the festival. (R. K31) The parking lot where Leib was present contained a carnival, including children's rides. (R. K11-12, 32-33, 101-02)

Robert Leib, Donald's older brother, testified he had attended Queen of Martyrs church for seven years and believed the festival was a church function. (R. K87-89, 96-97) On September 26, 2015, he invited Leib to attend the festival with him, along with Robert's son, daughter, and grandchild. Robert knew Leib had restrictions as a convicted sex offender and would not have invited Leib to attend the festival, if he did not believe it was a church function. (R. K96-97) He also believed the festival was located on church property. (R. K96-97)

After Leib agreed to accompany Robert's family to the festival, Robert drove the family there and parked a block away. (R. K93) The family then walked up St. Louis Avenue and entered the parking lot on that street. (R. K90, 93) Robert and Leib went to buy ride tickets and then met Robert's daughter and grandson at a roller coaster. (R. K93-94) At that time, Leib who lived in Chicago was seen by one of his neighbors, State witness Jeanne Cassidy. (R. K52) Cassidy knew Leib was a registered sex offender and believed he could not attend the festival. (R. K49-53) Accordingly, she notified a Chicago police officer. (R. K52-53, 56)

Chicago Police Officer Daniel McGreal testified he was on duty in Chicago on September 26, 2015, but stopped by Queen of Martyrs Fest in Evergreen Park to visit his family. (R. K65-66, 70) While he was there, Cassidy approached him, concerned about Leib's presence. (R. K68)

McGreal asked Leib for his name and identification, which Leib provided. (R. K68, 72-73, 94) McGreal then asked Leib to walk with him to his police car across the street. (R. K68) Leib and Robert followed McGreal. (R. K69, 94) When McGreal ran Leib's name, it did not return that he was a registered sex offender. (R. K69) McGreal told Leib people were uncomfortable with his presence, and that he should not be at the festival. (R. K69, 94) Leib agreed and left immediately. (R. K69, 73-74, 94)

The next morning, Cassidy knocked on Leib's door and told him she had filed a police report with the Evergreen Police Department. (R. K57-58) Leib said he had seen her at the festival and understood her concerns. (R. K59) He later surrendered to police. (R. K104) Evergreen Park Detective Signorelli, the assigned investigator, indicated on his police report that the premise type of the incident was "church, synagogue, or slash temple." (R. K104)

Prosecution's Theory

During summation, the prosecutor highlighted how the church and school were "synonymous" and considered the same entity for tax purposes. (R. K107-08) She argued the parking lot was "within the proximity" of the gym, and said "it defies common sense and logic that this would not be school property or that a sex offender would know or somehow would not know that this was school property and that there were children who were present." (R. K108) She continued:

> The excuse that somehow that this was on the church and somehow that makes it right, Judge, it does not make it right. This is a violation of the law, your Honor, and we have shown that beyond a reasonable doubt. (R. K110)

Defense counsel highlighted that the language of the charge against Leib only prohibited his knowing presence "on real property comprising any school." (R. K111) Counsel argued that the parking lot was not such property because it was separated by a public street from the parish property that contained the school. (R. 112) Counsel also argued that even if the

parking lot was restricted under the statute, the State failed to prove Leib knew he was on real property comprising a school, where: (1) the only sign on the parking lot did not mention any school; and (2) even some church employees believed the parking lot was church property. (R. K114-16)

In rebuttal, the prosecutor asserted that she understood the contrary opinion given from "someone that's worked there for a long time." (R. 118) She continued:

> Anyone could say that that church that they've worked for, they've belonged to for that long, that they believed that is church property. They can say that, your Honor, but the definitive answer comes from the Pastor that has that church, that works there, and that puts his time and efforts into that school and into that parish [*sic*]. (R. K118)

She later concluded:

> If you look at this from a common sense perspective, it was a carnival for children under 18. It was benefitting the school at that time. There was young children there. This defendant chose to go there. And we have to be mindful of that fact. This defendant chose to go there.
>
> Regardless of his brother and enjoying that time with his family, this defendant made a conscious effort and went to this carnival and stayed at that carnival when there was young children there. He doesn't have a right to go to a carnival and enjoy that area where our young children are playing and enjoying those times there. (R. K119)

Trial Court Ruling

> The trial court found Leib guilty. It reasoned:
>
> ... what's interesting and what nobody has mentioned is that if you read this, "Committed the offense of prohibited presence within a school zone," zone to me is an important word.
>
> The school zone is, from what the testimony came out from I believe it was the principal said that the street was blocked off on 103rd Street on St. Louis, it was blocked off to the north, past where I guess I believe you said the convent was there. And that's all blocked off. Now, that to me, that means it's a school zone, for that day, at least.
>
> And that's to say I don't see how any reasonable person, especially a convicted sex offender, would not be able to realize that; A, there are children there; B, they were all under - most of them are under 18 because I can't see any college kids going other than to go to the beer tent and listen to the music; and, C, it defies logic that you wouldn't know this. (R. K120-21)

Motion for a New Trial

Defense counsel filed a motion for a new trial, in which he argued that the court improperly found the word "zone" important, when that word was only mentioned in the title of the statute, not the section under which Leib was charged and convicted. (C. 56) Counsel also argued that the court improperly focused on what Leib "should have known," rather than what he actually knew. (C. 55)

The prosecutor argued that the priest and principal testified that the parking lot where Leib was present was "part of the school." (R. M11) She also asserted:

> I really think that regardless of counsel's indication of what the defendant's knowledge is, it's not a knowledge based consent [*sic*]. It certainly is something that the defendant should know, and that ignorance is certainly not a defense in this case. (R. M11-12)

The trial court denied the post-trial motion, without reciting its reasoning. (R. M13)

Sentencing

At sentencing, the State presented evidence regarding Leib's prior convictions, including: (1) a 2003 conviction for indecent solicitation of a child (R. M25-43); and (2) a 2007 conviction for child abduction/attempted luring of a child. (R. M16-22)

Evaristo Ruiz, the sex offender counselor who treated Leib following his prior convictions, testified Leib successfully completed his counseling and was always very cooperative and did what he was supposed to do. (R. L9-11, 13-14, 25) Leib had returned for group counseling on his own volition. (R. L12, 16-17, 27)

John Parzygnot, the owner of Parzygnot Funeral Home, testified Leib had worked with him as a funeral director for eight-and-a-half years. Leib was a valued employee who was respected by the clients; many families asked for him by name. Parzygnot trusted Leib and said he could continue to work for him following any sentence he received. (R. M49-51)

The defense also called or submitted mitigation letters from numerous other witnesses.

(C. 67-78, 97-104; R, M45-48) Jeanne Cassidy, the neighbor who filed the complaint in this case, submitted two emails. (C. 73-74) In those emails, she explained that she filed the complaint "hoping that the community would be more aware and if they see something they should say something." (C. 74) She "didn't expect nor wish for Donald Leib to be sentenced to jail time," but only "hoped he would be monitored more frequently." (C. 74) She had been "upset" when his bond was revoked. (C. 73)

The court imposed a 12-month sentence on Leib, with credit for 115 days already served. (C. 96; R. N2-6)

Appellate Court Decision

On appeal, Leib argued his conviction should be reversed because the parking lot where he attended Queen of Martyrs Fest did not comprise a school; if it did, the State did not prove he was consciously aware of that fact. In a divided decision, a majority affirmed his conviction.

First, the court determined that the parking lot constituted "real property comprising any school." *People v. Leib*, 2020 IL App (1st) 170837-U, ¶¶25-28. The court relied on the general definition of "school" under 720 ILCS 5/2-19/5 (2014), which includes "the grounds of a school." *Id*. at ¶¶25-26. The court reasoned that excluding "the portions of school grounds that are separated from physical buildings by public streets would be counter to the statute's intent, to prevent the presence of child sex offenders on school grounds where children congregate, solely based on the fact that certain grounds do not touch school buildings and fail to recognize the reality of urban school campuses." *Leib*, 2020 IL App (1st) 170837-U, ¶27.

A majority of the court also determined that Leib had knowledge that the parking lot was real property comprising a school. *Leib*, 2020 IL App (1st) 170837-U, ¶¶29-34. The majority relied on: (1) the testimony of the Queen of Martyrs parish and business manager that the school and church were one entity; (2) the fact that the festival flyer stated that children's games were

available at the festival "in the St. Joseph's room"; (3) the purpose of the festival was to raise funds both for the parish and the school; and (4) the presence of children at the festival. *Id*. at ¶¶31-32. The court concluded that "a reasonable person could infer that the parking lot where the rides for young children were located was school property." *Id*. at ¶31.

Writing in dissent, Presiding Justice Mikva determined the State did not present any evidence, let alone sufficient evidence, to prove Leib knew he was on real property comprising any school. *Leib*, 2020 IL App (1st) 170837, ¶¶38-47 (Mikva, J., dissenting). She noted that: (1) the festival flyer contained no indication the festival was taking place on school property; (2) the parish employees disagreed on whether the parking lot was school or church property; (3) the police report listed the location of the festival as a "church synagogue or temple"; and (4) Robert invited Leib to attend the festival believing the parking lot was church, not school, property. *Id*. at ¶41. Justice Mikva concluded, "there is simply no way that Mr. Leib can be charged with knowledge of something which was not marked by any signage and on which even the witnesses and the church employees could not agree." *Id*. She criticized the trial and appellate court majority for "simply assuming" that Leib knowingly came onto school grounds, which she found irrational, especially since Leib "was compliant with the draconian requirements of the sex offender registration laws for eight years." *Id*. at ¶¶43-46.

Leib filed a rehearing petition. The majority denied rehearing, while Justice Mikva again dissented.

ARGUMENT

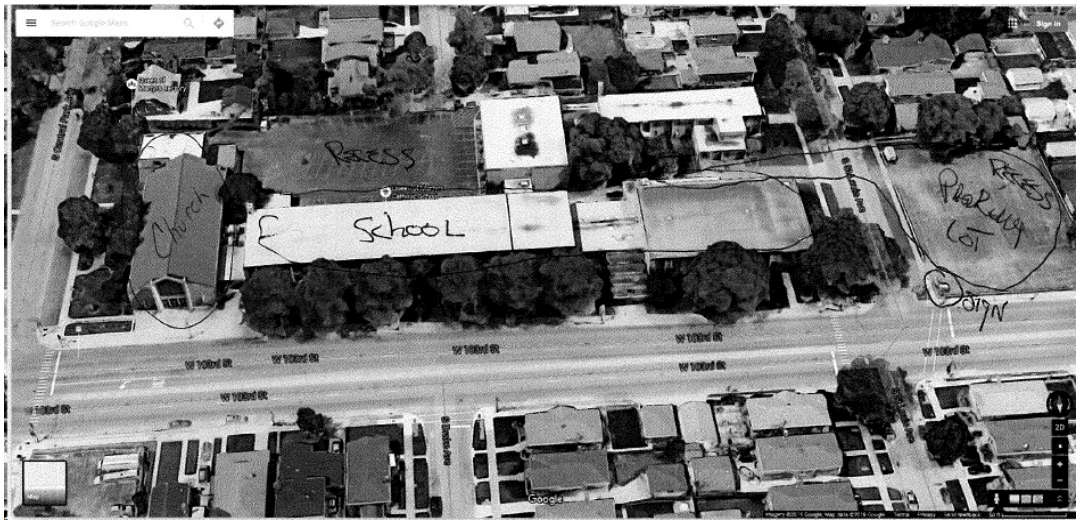
Introduction

Under 720 ILCS 5/11-9.3(a) (2015) ("subsection 5/11-9.3(a)"), the State charged Donald Leib with having been present "knowingly on the real property comprising any school," when persons under the age of 18 were present. (C. 21) The charges arose when, following eight years of compliance with Illinois's sex offender registration laws, Leib went to "Queen of Martyrs Fest" upon the invitation of his older brother and his family on a Saturday evening, September 26, 2015. The family attended the festival at a parking lot on the corner of St. Louis Avenue and 103rd Street, in Evergreen Park. (R. K14, 101-02) There was no school located on that parking lot, but it was owned by the Bishop of Chicago and located across the street from Queen of Martyrs Parish, which operated a church, school, and gym. The parish used the parking lot at issue for church, school, and other functions. (R. K100-01)

This Court should reverse Leib's conviction for two reasons: (I) under the plain language of subsection 5/11-9.3(a), the parking lot where Leib attended Queen of Martyrs Fest was not "real property comprising any school;" and (II) if the parking lot could be construed as such property, the State did not prove Leib entered the parking lot knowing it comprised any school.

I. Under the plain language of subsection 5/11-9.3(a), the parking lot where Donald Leib attended Queen of Martyrs Fest did not constitute real property comprising any school.

First, the State failed to prove beyond a reasonable doubt that the parking lot where Donald Leib attended Queen of Martyrs Fest was restricted to child sex offenders under subsection 5/11-9.3(a). The following photo, Defense Exhibit 2, was presented at trial and shows the parish property. The parking lot where Leib attended Queen of Martyrs Fest is shown on the right side of the photo. The school is also identified, and it is separated from the parking lot by another building and a public street, St. Louis Avenue. (R. K15-17, 101-02)



Due to Leib's presence in the parking lot across the street from the school, he was charged with knowingly being present on "real property comprising any school," when children under the age of 18 are present. 720 ILCS 5/11-9.3(a). However, the plain language of subsection 5/11-9.3(a) does not cover the parking lot at issue in this case.

A challenge to the sufficiency of the evidence generally asks "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). However, this issue involves statutory interpretation, and is thus subject to this Court's *de novo* review. *See People v. Hardman*, 2017 IL 121453, ¶19 ("Whether the statute [providing an increased penalty for delivering a controlled substance within 1000 feet of a school] requires the State to present particularized evidence of a building's use involves a question of statutory interpretation subject to *de novo* review."); *People v. Ward*, 215 Ill. 2d 317, 324 (2005) (exercising *de novo* review to resolve defendant's sufficiency challenge by determining the meaning of "possession" for purposes of the harmful material statute).

The cardinal rule of statutory construction is to give effect to the legislature's intent, and the best indication of legislative intent "'is the statutory language, given its plain and ordinary

meaning.'" *Hardman*, 2017 IL 121453, ¶19, *quoting Hall v. Henn*, 208 Ill. 2d 325, 330 (2003). Words and phrases should not be considered in isolation, but interpreted in light of other relevant portions of a statute, so that no term is rendered superfluous or meaningless. *Land v. Board of Educ. of City of Chicago*, 202 Ill. 2d 414, 422 (2002). This Court will also presume that the legislature, when enacting the statute, did not intend absurdity, inconvenience, or injustice. *Id*. If the plain language of the statute is clear and unambiguous, that plain language must prevail, and no resort to other tools of statutory construction is necessary. *Id*. at 421-22. Criminal statutes must also be strictly construed in favor of the defendant. *People v. Laubscher*, 183 Ill. 2d 330, 337 (1998).

In this case: (A) the plain and ordinary meaning of "real property comprising any school" is clear and unambiguous, and demonstrates that subsection 5/11-9.3(a) only prohibits child sex offenders from real property on which a school is located. Yet: (B) if this language is ambiguous, additional tools of statutory construction lead to the same conclusion. Finally: (C) the various manners in which the appellate court, trial court, and prosecution sought to expand this statute to render it applicable to the parking lot where Leib attended Queen of Martyrs Fest are contrary to the plain language of the statute.

A. Under the plain language of subsection 5/11-9.3(a), the parking lot was not "real property comprising any school."

The subsection charged against Leib makes it "unlawful for a child sex offender to knowingly be present in any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity when persons under the age of 18 are present in the building, on the grounds or in the conveyance," unless certain conditions exist. 720 ILCS 5/11-9.3(a) (2015). Within this statute, the legislature provided a specific definition of the word "school." Subsection (d) indicates that, for purposes of this statute, "[s]chool means a public or private preschool

or elementary or secondary school." 720 ILCS 5/11-9.3(d)(15) (2015). In other words, the "school" referred to in section 5/11-9.3(a) is an *actual* school, specifically any preschool, elementary school, or secondary school. The definition does *not* include the grounds of a school.

Neither "real property" nor "comprising" are defined in the statute. Thus, these words must "be given their ordinary and popularly understood meaning." *Kozak v. Retirement Bd. of Firemen's Annuity and Ben. Fund of Chicago*, 95 Ill. 2d 211, 215 (1983). In that regard, Black's Law Dictionary defines "real property" as "Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to land," which can be "either corporeal (soil and buildings) or incorporeal (easements)." Real Property Definition, BLACKS LAW DICTIONARY (11th ed. 2019), *available at* Westlaw. That legal definition of real property is also understood by laypeople as the common meaning of the term. *See* www.lexico.com/definition/real_property (powered by Oxford Dictionary) (defining real property as "property consisting of land or buildings") (last visited April 8, 2021).

Black's Law Dictionary defines the word "comprise" as "[t]o comprehend; include; contain; embrace; cover." *See* BLACKS LAW DICTIONARY 198 (Abridged 6th Edition 1991). The word is nearly identically defined in standard dictionaries. *See* THE MERRIAM-WEBSTER DICTIONARY 167 (5th Paperback Edition 1997) (defining "comprise" as: (1) "include; contain."; (2) "to be made up of;" or (3) "compose; constitute"); www.dictionary.com/browse/comprise (defining "comprise" as: (1) "to include or contain;" (2) "to consist of; be comprised of;" or (3) "to form or constitute") (last visited April 8, 2021).

Thus, all of the essential words of subsection 5/11-9.3(a) are either expressly defined within the statute or have a clear and common meaning. In clear terms, it is unlawful for child sex offenders to knowingly be present on "real property comprising any school," *i.e.*, any land that includes or contains any public or private preschool or elementary or secondary school.

Indeed, when addressing similar statutory language, courts throughout the country have determined that "real property comprising a school" is property that *contains* a school, *not* non-contiguous land like the parking lot at issue in this case, which is owned or used by a school, but separated from the school by an intervening tract of land.

For example, in *Stamps v. State*, 620 So. 2d 1033, 1033 (Fla. Ct. App. 1993), the defendant was charged with purchasing cocaine within 1,000 feet of "real property *comprising* a ... school" (emphasis in original). However, the tract of land from which the point of sale was measured was an overflow parking lot owned and used by a school, but separated from the school by a soccer field. *Id.* On appeal, the court explained it would have affirmed the defendant's conviction "if the evidence would have permitted the jury to infer that defendant's cocaine purchase was made within 1,000 feet of the 'boundaries' of the school, that is, within 1,000 feet of the school area consisting of contiguous tracts owned by the school, none of which were separated from one another by an intervening tract having a different owner." *Id.* at 1033. However, no testimony allowed that inference: the testimony only showed that the school owned *the parking lot*. *Id*. The court explained, "it is not sufficient that the school 'own' the property," but "the property must 'comprise' the school." *Id.* Accordingly, the parking lot at issue did not comprise any school, and the defendant's conviction for purchasing cocaine within 1,000 feet of real property comprising a school was reduced to a lesser-included offense. *Id.* at 1033-34.

Similarly, courts that have *affirmed* a defendant's conviction for committing a particular crime on or near "real property comprising a school" have also focused on whether the land at issue contained a school. For example, in *Commonwealth v. Paige*, 768 N.E.2d 572, 573-74 (App. Ct. Mass. 2002), a school owned a 24-acre site, including 18 acres comprising a school building, playground, and soccer field. The remaining six "contiguous" acres consisted of undeveloped land. *Id*. The defendant lived within 1,000 feet of the *undeveloped* portion of

this land, but not within 1,000 feet of the school building, playground, or soccer field. *Id*. In analyzing whether the undeveloped acreage constituted "real property comprising a ... school," *Paige* held that "[a]ccepted definitions of 'comprise' are: 'to include' and 'contain.'" 768 N.E.2d at 575, *citing* Webster's Third New International Dictionary p. 467 (1993). Since the undeveloped portion of the real property at issue was contiguous to the school, the defendant violated the statute due to his prohibited activity within 1,000 feet of that land. The court explained, "...when, as here, a boundary line circumscribes a public elementary school building together with adjacent school land areas *which are contiguous, and not separated by intervening land under different jurisdiction,*" the property constitutes real property comprising any school. *Id*. (emphasis added).

Similarly, in *State v. Peterson*, 490 N.W.2d 53, 53 (Iowa 1992), the defendant argued that a statute requiring an enhanced sentence for delivering a controlled substance within 1,000 feet of real property comprising a school was unconstitutionally vague as applied to him. At the defendant's trial, an expert land surveyor testified that the distance between the parking lot where the defendant delivered drugs and a school building was 1,232 feet, but the distance between the parking lot and the nearest point "of the land owned by the school district surrounding *and contiguous* to the school buildings" was 138 feet. *Id*. at 54 (emphasis added). The defendant argued that the statute was vague because it did not make clear whether real property comprising any school constituted an actual school building, or all of the land containing that school. *Id*. The Iowa Supreme Court rejected that argument. It noted that Black's Law Dictionary defined "real property" as both land and whatever is erected on that land, and "that the words 'real property comprising a school' are *commonly understood* to include not only the school buildings but also the *contiguous land* surrounding the buildings." *Id*. at 54-55 (emphases added). Accordingly, since the phrase "real property comprising a school" was clear, it was not vague as applied to the defendant. *Id*.

Thus, each of these courts recognized that the plain and commonly understood meaning of "real property comprising a school" is any property that contains or is contiguous to a school, not separated from a school by an intervening tract of land owned by a different jurisdiction. The same commonly understood meaning should be applied here. Under subsection 5/11-9.3(a), the legislature specifically precluded child sex offenders from being on real property comprising any school. It did *not* make it unlawful for child sex offenders to be on any real property *incidental* to a school, *used* by a school, or *owned* by a school. *See Kozak*, 95 Ill. 2d at 215-16 (when "the words of the statute are plain and unambiguous," courts "cannot read into the statute words which are not within the plain intention of the legislature as determined from the statute itself") (internal quotations omitted). Thus, "real property comprising any school" means exactly what it purports to mean: any property that contains a school, as well as the *contiguous* land surrounding the building; *not* property separated from the building by an intervening tract of land. *See Stamps*, 620 So. 2d at 1033; *Paige*, 768 N.E.2d at 573-74; *Peterson*, 490 N.W.2d at 53-54.

Here, the parking lot where Leib attended Queen of Martyrs Fest did not contain any school. While Leib may have been on real property comprising a school had he entered any portion of the property that *was* contiguous to the school, he remained in a parking lot that was separated from the school by an intervening public street and building. Thus, applying the plain language of the statute, Leib did not commit the offense charged against him. *See Stamps*, 620 So. 2d at 1033; *Paige*, 768 N.E.2d at 573-74; *Peterson*, 490 N.W.2d at 53-54.

B. Additional tools of statutory construction confirm that "real property comprising any school" is any tract of land containing a school, *not* non-contiguous property owned or used by a school.

If this Court finds the language in subsection 5/11-9.3(a) ambiguous or subject to more than one reasonable interpretation, this Court may rely on additional tools of statutory construction to determine legislative intent. *People ex rel. Department of Professional Regulation v. Manos*,

202 Ill. 2d 563, 571 (2002). To that end, these tools confirm the legislature's deliberate choice of the narrow and commonly-defined understanding of the phrase "real property comprising any school," and show further that the parking lot in this case did not qualify under the statute.

First, "[w]hen the legislature uses certain language in one part of a statute and uses different language in another, [courts] may assume different meanings were intended." *Carver v. Bond/Layette/Effingham Regional Bd. of School Trustees*, 146 Ill. 2d 347, 353 (2007). For example, in *Brucker v. Mercola*, 227 Ill. 2d 502, 514-15 (2007), this Court addressed whether a statute of repose barred a medical malpractice complaint, where the statute at issue contained limitations on when a complaint "arising out of patient care" could be filed. Among the arguments rejected by this Court was that the phrase "patient care" was synonymous with "medical malpractice." *Id*. at 531-32. This Court pointed to "clear evidence that, when the legislature wants to make healing art malpractice the touchstone for a statute's applicability, it knows how to do so." *Id*. at 532. Specifically, in other statutes, the legislature had used that very phrase. *Id*. Accordingly, since the repose statute instead placed time limits on complaints "arising out of patient care," courts "must presume that the legislature did not intend 'patient care' to be synonymous with 'medical malpractice.'" *Id*.

Applying this principle to the issue in this case, the Illinois legislature has used multiple distinct terms of art to differentiate types of properties related to a school. For example, in 705 ILCS 405/5-407 (eff. Jan. 1, 2016), the legislature indicated that, when a juvenile court finds probable cause to believe a minor possessed a firearm "while on school grounds," a presumption of immediate and urgent necessity to keep the minor detained will arise. 705 ILCS 405/5-407(b). Within that same statute, the legislature explained that: (1) "School" means "any public or private elementary or secondary school;" and that (2) "School grounds" include "the real property comprising any school, any conveyance owned, leased, or contracted by

a school to transport students to or from school or a school-related activity, or any public way within 1,000 feet of the real property comprising any school." 705 ILCS 405/5-407(e). *See also* 105 ILCS 10/27.1A (eff. Jan. 25, 2013) (providing mandates for school officials when they observe a person in possession of a firearm "on school grounds," and defining "school grounds" in an identical manner); 720 ILCS 5/11-30(c) (eff. 2011) (making the offense of public indecency as Class 4 felony when "committed by a person 18 years of age or older who is on or within 500 feet of elementary or secondary school grounds when children are present..."); 105 ILCS 5/24-24 (requiring teachers to maintain discipline in schools, "including school grounds which are owned or leased by the board and used for school purposes and activities").

Thus, the Illinois legislature recognizes a difference between "school grounds" and "real property comprising any school." In fact, the definition of "school grounds" in 705 ILCS 405/5-407(e) and 105 ILCS 10/27.1A, two of the statutes mentioned above, specifically indicates that "real property comprising any school" is just *one* particular and necessarily narrower type of "school grounds." Moreover, "school grounds" include *both* real property comprising any school *and* any nearby public ways, confirming that "real property comprising any school" does not include public ways.

Other states recognize the same distinction. For example, in *State v. Mathias*, 936 N.W.2d 222 (Iowa 2019), the Iowa Supreme Court determined that a school-district owned athletic complex that was *not* contiguous to a classroom building qualified as "grounds of a school." In so doing, the Court emphasized that elsewhere in the Iowa Criminal Code, the legislature had used the phrase "real property comprising a school," and thus distinguished the two terms. *Id*. at 230. The Court also recognized that the "grounds of a school" are "*broader* than that 'real property comprising a public or private elementary or secondary school.'" *Id*. (emphasis added). Thus, *unlike* real property comprising a school, the "grounds of a school" may include

district-owned facilities that are not part of or built on the land contiguous to the classroom building. *Id*. at 233. *See also State v. Shannon*, 892 P.2d 757, 758-60 (Ct. App. Wash. 1995) (where statute provided an enhanced penalty for drug sales in "school grounds," the legislature "plainly extended" the zone of protection *outward* from all real property comprising the school *and* supporting its activities"). By contrast, in subsection 5/11-9.3(a) as well, the legislature chose *only* to address the more narrow "real property comprising any school."

The Illinois legislature has also distinguished between "real property *of* a school" and "real property *comprising* a school." For example, under the child abduction statute, 720 ILCS 5/10-5(d)(6) (eff. July 27, 2015), a court must consider as aggravating if the defendant committed an abduction on either "the real property of a school" *or* "the real property comprising any school." Similarly, under 730 ILCS 5/5-5-3.2(a)(16) (2021), a court may consider as aggravating if certain additional enumerated offenses were committed *either* "on the real property of a school" *or* "within 1,000 feet of the real property comprising any school." Thus, real property *of* a school is not synonymous with real property *comprising* a school. On its face, the real property *of* a school would include any parking lots *owned* and/or *used* by the school. However, if real property *comprising* a school *also* included properties owned or used by a school, then there would be no need for the legislature to use the phrase "real property of a school" within the same statutes where it also addressees "real property comprising any school." Thus, again, the legislature's specific choice to use the narrower phrase real property *comprising* any school in subsection 5/11-9.3(a), as opposed to the "school grounds" and "real property of a school" referenced in other statutes, must be given effect.

Finally, the rule of lenity requires that criminal statutes be construed strictly in favor of the defendant. *See Laubscher*, 183 Ill. 2d at 337 (where criminal firearm possession statute contained an exemption to allow a person to carry a weapon on "his land," statute construed

in favor of defendant to allow exemption on *any* land on which he enjoyed *some* liberty interest). Likewise, a criminal statute violates due process when it forbids the doing of an act in terms so vague that persons of normal intelligence must guess at its meaning and differ as to its application. *People v. Manness*, 191 Ill. 2d 478, 483-84 (2000). Courts also have "a duty to uphold the constitutionality of a statute when reasonably possible." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296 (2008). Thus, "if a statute's construction is doubtful, a court will resolve the doubt in favor of the statute's validity." *Id*.

In *People v. Stork*, 305 Ill. App. 3d 714, 723-24 (2d Dist. 1999), the appellate court rejected a defendant's due process challenge to subsection 5/11-9.3(a) specifically because, *inter alia*, it only "restricts child sex offenders *from a readily identifiable area.*" (Emphasis added.) As explained in Part A, *supra*, the readily identifiable meaning of "real property comprising any school" is land that either contains or is contiguous to a school, not separated by intervening land owned by another jurisdiction. *See Stamps*, 620 So. 2d at 1033; *Paige*, 768 N.E.2d at 573-74; *Peterson*, 490 N.W.2d at 53-54. Thus, to construe subsection 5/11-9.3(a) otherwise and include land like the parking lot at issue in this case not only broadens the reach of the statute *against* the defendant and the rule of lenity, but it also renders the statute unclear and subjects it to vagueness challenges. *See Manness*, 191 Ill. 2d at 483-84. *See also State v. Wilt*, 44 P.3d 300, 301-03 (Kan. 2002) (construing phrase "school property" strictly in favor of defendant to conclude that baseball diamonds located in city-owned park, which were regularly used by high school with permission from city, were not school property, because the phrase "school property" implied some sort of ownership or tenancy interest in property).

In short, if "real property comprising a school" is ambiguous, additional rules of statutory construction make clear its meaning. The legislature knows how to describe "school grounds" and "property of a school" when it intends to reference such broad types of property, but it

chose only to restrict *one* type of school ground real property comprising any school under subsection 5/11-9.3(a). Since the parking lot where Leib attended Queen of Martyrs Fest contained no school, it was not restricted under subsection 5/11-9.3(a).

C. The manners in which the courts determined and the prosecutor argued below that the parking lot comprised a school were incorrect.

Finally, when addressing this issue below, the appellate court, trial court, and prosecutor offered dramatically different reasons *why* the parking lot where Leib attended Queen of Martyrs Fest constituted "real property comprising any school." None of their interpretations pass muster.

1. Appellate Court's Reasoning

The appellate court cited two theories why the parking lot comprised a school. First, the court noted that "school" is defined under 720 ILCS 5/2-19.5 (2014) as "a public, private, or parochial elementary or secondary school, community college, college, or university and includes the grounds of a school." *People v. Leib*, 2020 IL App (1st) 170837-U, ¶25. Citing the definition of the word "grounds" in the Merriam-Webster Dictionary, *i.e.*, "the area around and belonging to a house or other building," the court determined that "the parking lot of a school would qualify as part of the school grounds," regardless of whether the lot was separated from the school by an intervening tract of land. *Leib*, 2020 IL App (1st) 170837-U, ¶¶26-27, *citing* Merriam-Webster Dictionary, https:www.merriam-webster.com/ dictionary/grounds.

However, the definition of the word "school" relied on by the appellate court is located in Article 2 of the Criminal Code, which offers general definitions to be applied throughout the entire Criminal Code. 720 ILCS 5/2-19.5. Yet as noted in Part A, *supra*, the specific statute under which Leib was convicted, 720 ILCS 5/11-9.3, has its own distinct and more narrow definition of the word "school," which does *not* include the grounds of a school and instead means "a public or private preschool or elementary or secondary school." 720 ILCS 5/11-

9.3(d)(15). "Where there are two statutory provisions, one of which is general and designed to apply to cases generally, and the other is particular and relates only to one subject, the particular provision must prevail." *Hernon v. E.W. Corrigan Const. Co.*, 149 Ill. 2d 190, 195-96 (1992) (collecting cases). Thus, regardless of how "school" is defined generally in the Criminal Code, the definition of "school" specifically provided in section 5/11-9.3 governs subsection 5/11-9.3(a).

Furthermore, it is absurd to apply the definition of "school" found in 720 ILCS 5/2-19 to section 5/11-9.3(a). *See People v. Austin*, 2019 IL 123910, ¶15 (courts "must presume that the legislature did not intend to create absurd, inconvenient, or unjust results").That definition includes community colleges, colleges, and universities. 720 ILCS 5/2-19.5. Yet institutions of higher education are not areas that children under the age of 18 commonly frequent without their parents, and child sex offenders are not banned from being employed at or attending these institutions. In fact, the legislature specifically contemplates that sex offenders *will* attend these institutions by requiring them to register with the public safety officer of the institution in question as well as the local authorities, when they do attend such a school. *See* 730 ILCS 150/3 (a) (2015). *See also Frazer v. Sheldon*, 320 Ill. 253, 264-65 (1926) (subject to reasonable exercise of police power, right to pursue ordinary trades and to follow common occupations is an inalienable right governed by the right to pursue happiness, and the right to liberty and property). Thus, the legislature clearly did not intend for the general definition of "school" found in 720 ILCS 5/2-19 to govern subsection 5/11-9.3(a). Unlike section 5/2-19, the legislature not only declined to include institutions of higher education as the types of "schools" addressed in section 5/11-9.3, but it also specifically excluded "the grounds of a school" from that definition.

The appellate court further reasoned that the parking lot where Leib attended Queen of Martyrs Fest must be deemed to constitute "real property comprising any school" because excluding "portions of school grounds that are separated from physical buildings by public

streets would be counter to the statute's intent, to prevent the presence of child sex offenders on school grounds where children congregate, solely based on the fact that certain grounds do not touch school buildings and fail to recognize the reality of urban school campuses." *Leib*, 2020 IL App (1st) 170837-U, ¶28. However, under a different subsection of the same statute, 720 ILCS 5/11-9.3(a-5) (2015), it is already unlawful for child sex offenders to knowingly be present within 100 feet of "a site posted as a pick-up or discharge site for a conveyance owned, leased, or contracted by a school to transport to or from school or a school related activity," when children are present. Thus, any urban campus that owned and/or used a parking lot across the street from the school building can already protect that property from child sex offenders by posting a sign somewhere on the site indicating its use for school pick-up and drop-off. In this case, however, Queen of Martyrs did not take that action, and the only sign in the parking lot advertised adult Bingo activities in the parish gym. (R. K24; Exh. D.E. 5) Thus, enforcing the plain language of section 5/11-9.3(a) does not create any "loophole" for parking lots used by urban schools.

Moreover, the legislature has a very good purpose in only prohibiting the presence of child sex offenders on real property "comprising" a school and on other sites marked as school pick-up and drop-off sites. When a parking lot contains or is contiguous to a school, or when it bears a sign indicating its use by a school, that lot is clearly identifiable to a child sex offender as a location where they cannot be present. However, when a parking lot that is owned or used by a school is not marked as such, the restricted nature of the property is not so obvious. Not only could this lead to public disturbances when a child sex offender was present at an ambiguous location, but as explained in Part B, *supra*, it also subjects the statute to vagueness challenges, eliminating the protections of the statute entirely.

For all these reasons, the appellate court's analysis on this issue was incorrect.

2. Trial Court's Reasoning

The trial court offered an equally unworkable interpretation of subsection 5/11-9.3(a). Specifically, the court focused first on the title of the entire statute under which Leib was charged: "Presence within school zone by child sex offenders prohibited; approaching, contacting, residing with, or communicating with a child within certain places by child sex offenders prohibited." The court found the word "zone" to be "important." (R. K120) It reasoned that, since St. Louis Avenue had been blocked off for Queen of Martyrs Fest, the parking lot was "a school zone, for that day, at least." (R. K120)

The court first erroneously hinged Leib's guilt on the name of the *statute* charged against him, rather than on whether the State proved the elements of the *specific offense* alleged within that statute. The title of a statute cannot be used to alter the plain meaning of statutory text. *Home Star Bank and Financial Svcs v. Emergency Care and Health Organization, Ltd.*, 2014 IL 115526, ¶40. Moreover, the statute under which Leib was convicted contains 15 different subsections. It also prohibits child sex offenders from, *inter alia*, knowingly being present in any public park building, playground, or recreation area (720 ILCS 5/11-9.3(a-10)); knowingly residing within 500 feet of real property comprising a school or other locations, such as playgrounds, day care centers, or facilities providing services exclusively for children (720 ILCS 5/11-9.3(b-5), (b-10)); handing out Halloween candy, being employed as a store Santa Claus, or wearing an Easter Bunny costume (720 ILCS 5/11-9.3(c-2)); and knowingly operating an emergency or rescue vehicle (720 ILCS 5/11-9.3(c-8)). Thus, the title of the statute containing all of these highly varied offenses is clearly just a general descriptor term, and does not define any of the more detailed subsections therein. To prove the specific offense charged against Leib, the State needed to prove Leib was on real property comprising any school, when children under the age of 18 were present, not that Leib was in a school zone. (C. 21)

The trial court also erred by positing that the parking lot at issue was *temporarily* transformed into a school zone on the night of Queen of Martyrs Fest. Though Queen of Martyrs had apparently obtained permission to stop vehicle traffic on St. Louis Avenue during the festival, the parking lot itself still contained no school, and St. Louis Avenue remained public property separating the parking lot from the school. As will be explained, property should not be judged by subjective standards. Moreover, school was not in session that evening. Thus, if anything, this entire blocked off property became a festival zone that evening, not a school zone.

The appellate court's decision in *People v. Haberkorn*, 2018 IL App (3d) 160599, is useful on these points. There, the State alleged that the defendant, a child sex offender, had been knowingly present at a facility providing services exclusively directed toward children, in violation of 720 ILCS 5/11-9.3(c), when he accompanied his cousin and her three children on a bus for an Easter Seals program, while other children were present. *Haberkorn*, 2018 IL App (3d) 160599, ¶6. The evidence at trial established that Easter Seals was a national organization providing services for people with disabilities. *Id*. at ¶8. However, on the date in question, Easter Seals had chartered a bus to take a group of parents and children on field trip. *Id*. at ¶9. Thus, the State argued that, on that day, Easter Seals was providing a service directed toward children, and the bus in which the defendant and children were present constituted a facility providing a service exclusively for children, for that day at least. *Id*. at ¶29.

The appellate court rejected that argument. It explained that subsection 5/11-9.3(c) does *not* attempt to prohibit convicted sex offenders from being present at all venues where children together with their parents congregate. *Haberkorn*, 2018 IL App (3d) 160599, ¶31. Instead, "pursuant to the plain meaning of the statute," the State must prove that the defendant was knowingly present at a facility providing programs or services *exclusively* directed toward children. *Id*. Since neither the Easter Seals nor the bus itself exclusively provided services

for children, the defendant did not violate the statute simply because the entities provided services for children that day. *Id*. Here as well, since the parking lot where Leib attended Queen of Martyrs Fest was not real property comprising a school, it did not transform into such a property merely because the public street that separated the parking lot from the property that did contain a school was blocked for traffic that day.

Indeed, under the trial court's approach, real property becomes a fluid and subjective concept, leaving it up to the trier of fact to determine if any sort of property that did not actually contain a school was effectively serving as a "school zone" when the child sex offender was present. Such an analysis clearly does not provide notice to the ordinary citizen of where child sex offenders can and cannot be. *See Maness*, 191 Ill. 2d at 483-84 (to ensure due process, a statute must "adequately define the offense in order to prevent arbitrary and discriminatory enforcement," and must provide "a person of ordinary intelligence a reasonable opportunity to distinguish between lawful and unlawful conduct so that he or she may act accordingly").

Finally, even if the nature of "real property comprising any school" could change, the parking lot where Leib attended Queen of Martyrs Fest on Saturday night, September 26, 2015, had not been transformed into a school zone. School was not in session that evening, and *each* of the properties used by Queen of Martyrs at that location (*i.e.*, the parking lot where Leib was present, and the additional property that contained a school) were *all* being used to house a festival. Moreover, that festival was open until midnight and contained beer tents and adult music bands. (R. K85; Exh. D.E. 1) Thus, even if the nature of a property could be altered based on its use, this entire blocked-off area was a "festival zone" when Leib was present, not a "school zone." Moreover, nothing in the statute barred Leib from attending a festival. For all these reasons, the trial court's "school zone" interpretation of "real property comprising any school" also fails.

3. Prosecution's Argument

Finally, the prosecution argued at trial that the parking lot where Leib attended Queen of Martyrs Fest was "school property," first, because it was owned by the Bishop of Chicago. (R. K106-10) However, there is a legal distinction between "real property comprising a school" and "real property owned by a school." In *Commonwealth v. Klusman*, 708 N.E.2d 115, 116-17 (App. Ct. Mass 1999), the court held that the owner of property at issue was irrelevant when addressing similar statutory language, *i.e.*, "the real property comprising a ... school," because the word "comprise" does not require ownership, but only means "to comprehend; include; contain; embrace; cover") (*citing* Black's Law Dictionary 287 (6th ed. 1990)). *See also Stamps*, 620 So. 2d at 1033 ("it is not sufficient that the school 'own' the property. Rather, the property must 'comprise' the school. The two terms are not synonymous."). This distinction has also clearly been recognized by our own legislature. As explained in Part B, *supra*, the Illinois legislature uses *both* of the phrases "real property *of* a school" and "real property *comprising* a school" in the Criminal Code. *See* 720 ILCS 5/10-5(d)(6); 730 ILCS 5/5-5-3.2(a)(16). Since the legislature did *not* include "real property *of* a school" in section 5/11-9.3(a), but instead prohibits child sex offenders from "real property *comprising* a school," ownership cannot control.

Furthermore, if ownership of the lot were the ultimate factor in this case, the results would be absurd. The parking lot where Leib attended Queen of Martyrs Fest was not owned by the Queen of Martyrs parish, but by a corporation run by the Bishop of Chicago. (R. K14) So too did the corporation own the property on which the church and school were located, across the street. (R. K14) Thus, if ownership of a property governs whether it is real property comprising a school, *and* it does not matter if a particular piece of property is *contiguous* to a school, then *all* child sex offenders are banned from attending *any* Catholic church on *any* property owned by the same organization, since the corporation *at least* owns the property

where the Queen of Martyrs school is located. This could not have been the intent of the legislature, particularly where the statute does not bar sex offenders from attending church or other religious services. *See People v. Pullen*, 192 Ill. 2d 36, 42 (2000) (when interpreting a statute, courts must assume legislature did not intent absurd or unjust result).

The prosecution also argued that the school used the parking lot at issue. (R. K106-10) Yet, if use of a particular property governed subsection 5/11-9.3(a), then the legislature would have made it unlawful for a child sex offender to knowingly be present on "real property comprising *or used* by a school," rather than the narrower language chosen. *See Kozak*, 95 Ill. 2d at 215 (courts "cannot read into the statute words which are not within the plain intention of the legislature as determined from the statute itself"). Moreover, in this case, the parking lot at issue was only *sometimes* used for school purposes, and no signage indicated its use as such. The lot was *also* used by parishioners who attended the church, by adults who came to play Bingo, and by local leagues who used the Queen of Martyrs gym for athletic functions. (R. K19-20, 40-42, 102, 108) Thus, even though *some* people might know the parking lot was used by a school, such as school personnel and parents of the students who attended the school, others could not identify this parking lot in the same manner. Such a broad and subjective application of the statute cannot control.

D. Conclusion

Throughout the Criminal Code, the Illinois legislature has been deliberate in its choice of language when referring to different types of property involving schools. In section 5/11-9.3(a), the legislature chose only to restrict child sex offenders from "real property comprising any school." Not only is this language clear on its face, but it has been repeatedly construed by courts throughout the country as property that *contains* a school, not non-contiguous land that is used by a school but separated from the school by an intervening tract of land. *See Stamps*,

620 So. 2d at 1033; *Paige*, 768 N.E.2d at 573-74; *Peterson*, 490 N.W.2d at 53-54. Moreover, there is no reason policy or otherwise to depart from this plain language. Because the parking lot where Leib attended Queen of Martyrs Fest did not contain any school, this Court should reverse his conviction for knowingly being present as a child sex offender on real property comprising a school.

II. Even if the parking lot did comprise a school, the State failed to prove Donald Leib knew he was on such restricted property.

If the parking lot where Donald Leib attended Queen of Martyrs Fest with his family on a Saturday evening did comprise a school, no rational trier of fact could conclude Leib entered that lot knowing it comprised a school. Under subsection 5/11-9.3(a), the State must prove beyond a reasonable doubt that the defendant knew he was on real property comprising a school. *See* 720 ILCS 5/11-9.3(a) (2015). Here, Justice Mikva correctly determined when dissenting in the appellate court that the State did not present *any* evidence, let alone *sufficient* evidence, for a rational trier of fact to conclude Leib knew he was on real property comprising any school. *People v. Leib*, 2020 IL App (1st) 170837-U, ¶¶38-47 (Mikva, J., dissenting). This Court should reach the same result and reverse Leib's conviction.

On this issue, this Court views the evidence in the light most favorable to the prosecution and asks whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). However, "merely because the trier of fact accepted certain testimony or made certain inferences based on the evidence does not guarantee the reasonableness of its decision." *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A conviction must be set aside when the evidence creates a reasonable doubt as to the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

Under Illinois statute, "[c]onduct performed knowingly or with knowledge is performed willfully... ." 720 ILCS 5/4-5 (2015). A person "acts knowingly" when "he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist," or when the person has a conscious awareness of the substantial probability that the fact exists. *Id*. When prosecuting a defendant with a criminal offense, "knowledge" is not satisfied by establishing merely what the defendant "should have known." *People v. Nash*, 282 Ill. App. 3d 982, 985-87 (3d Dist. 1995). Instead, courts consider if the surrounding facts and circumstances "would"

lead a reasonable person to knowledge of fact at issue. *People v. Frazier*, 2016 IL App (1st) 140911, ¶23; *People v. Santana*, 161 Ill. App. 3d 833, 838 (1st Dist. 1987). *See also Does v. Cooper*, 148 F.Supp. 477, 488 (M.D. No. Car. 2015) (collecting cases to interpret the "knowingly" requirement of a North Carolina sex offender restriction statute and holding that "a restricted sex offender who unknowingly enters a restricted zone will not be in violation of the statute so long as he or she leaves the restricted zone immediately upon learning that he or she is in fact in a restricted zone").

A. Insufficient evidence was presented from which a rational fact-finder could determine Leib knew a school was located across the street from the parking lot where he attended Queen of Martyrs Fest.

In this case, the State first failed to present any facts or circumstances to prove Leib knew a school was located across the street and behind another building from where he attended Queen of Martyrs Fest. At trial, evidence was presented that Leib attended the festival at the invitation of his brother, Robert Leib. (R. K85) According to Robert, he invited Leib based on his own assumption that the festival was a church and not a school function. He also considered the parking lot at issue to be church rather than school property. (R. K85, 92-93, 96-97) Robert knew Leib was prohibited from certain areas, and said he would not have brought Leib to the festival, had he known it was located on real property comprising a school. (R. K95-97) Certainly, no evidence was presented that Leib had any knowledge about the Queen of Martyrs campus beyond that of his brother. Thus, where Robert believed he was inviting Leib to a church festival located on church property, that same belief could be attributed to Leib.

Moreover, Robert Pellegrini, the chairperson and organizer of Queen of Martyrs Fest, testified there was nothing on the flyer advertising the festival, Defense Exhibit 1 (shown on the next page), to indicate it was a school-related function or was located at or near a school. (R. K85)

QUEEN OF MARTYRS FEST
2015
SEPTEMBER 25TH 26TH AND 27TH
CARNIVAL HOURS & ENTERTAINMENT
MEGA PASSES
GOOD FOR ENTIRE FEST
$40 PER PERSON BEFORE 9/21/2015
MEGA PASSES $45 AFTER SEPTEMBER 21

FRIDAY SEPT. 25TH
5:00 - MIDNIGHT
(RIDES UNTIL 11:00 PM)
8:00-11:45
SHAWN & CHARLIE

SATURDAY SEPT. 26TH
NOON-MIDNIGHT
(RIDES UNTIL 11:00 PM)
$20.00 UNLIMITED
RIDE BRACELET
($20.00 PER PERSON BETWEEN 12-4 PM ONLY)
5:30-7:30
MCGINNIS BROTHERS
8:00-11:45 PM
NICK LYNCH'S BAND

SUNDAY SEPT. 27TH
1:00 - 9:00 PM
11:30 MASS OUTSIDE
(WEATHER PERMITTING)
COFFEE AND SWEET ROLLS FOLLOWING
BINGO 12:30 - 2:00 PM
$20.00 UNLIMITED
RIDE BRACELET
($20.00 PER PERSON BETWEEN 1-5 PM ONLY)
3:30-5:30
JOEY DIGGS AND THE DENTIST
5:30-9:00
LARKIN BROTHERS
ALPINE AMUSEMENT CO. INC.
CHILDRENS GAMES IN ST JOE'S ROOM
SATURDAY 12:00-4:00

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PULL TABS - SPLIT THE POT

QUEEN OF MARTYRS FEST
2015 RAFFLE
Exh 1

Tickets are available at the rectory and after all masses on the weekends from now until the weekend of Martyrs Fest 2015

SEPTEMBER 25TH 26TH AND 27TH
TICKETS ARE ONLY $50 EACH AND
ONLY 1000 WILL BE SOLD
1ST PRIZE $10,000.00
2ND PRIZE $2500.00
3RD PRIZE $2500.00
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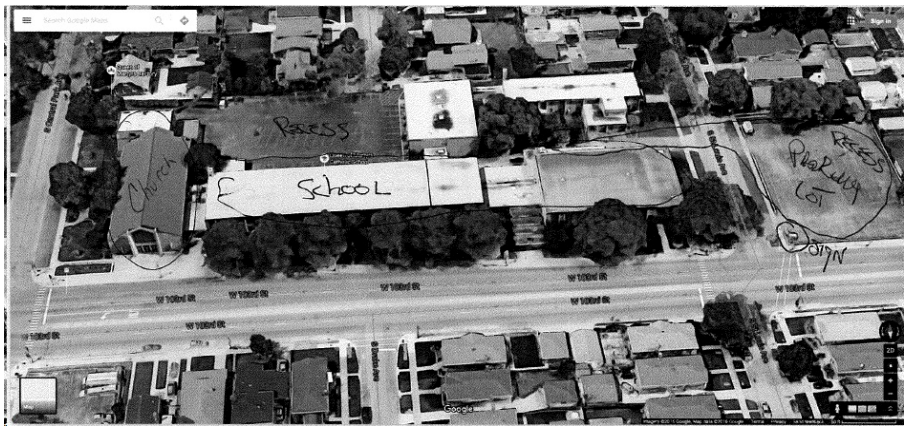
QUEEN OF MARTYRS FEST 2015 • SEPTEMBER 25TH, 26TH AND 27TH
10233 S. CENTRAL PARK • EVERGREEN PARK, IL 60805 • (708) 423-8110

The appellate court majority determined this flyer provided Leib with notice he was on real property comprising a school because the flyer "did state that children's games were available in the St. Joseph's room, which was located in the school." *Leib*, 2020 IL App (1st) 170837-U, ¶31. However, the only evidence that "the St. Joseph's room" was located inside a school came from testimony *at trial*, *i.e.*, the principal of the Queen of Martyrs school looked at the flyer and said the St. Joseph's room was located in her school. (R. K39-40) Yet as shown above, the flyer did not indicate the same, and instead stated simply, "Children's games in St. Joe's room," from 12 to 4 on Saturday. (Exh. D.E. 1) Thus, given that the festival took place at a parish, no reasonable person would ascertain from the flyer that the "St. Joe's room" was located in a school as opposed to a church. Equally notable is that, immediately beneath the notification regarding the children's games in St. Joe's room, the flyer also contained a large, highlighted box advertising a "beer tent." (Exh. D.E. 1)

Nor did the State prove the Queen of Martyrs school was visible from the parking lot where Leib attended the festival. According to Robert, he drove the family to the festival and

parked about a block away. They then walked up St. Louis Avenue to enter the parking lot. (R. K93) Robert did not say if he parked north or south of 103rd Street. Yet the "whole [parish] plant" is shown in the following photo, Defense Exhibit 2 (R. K10, 99):



As Reverend Mikolajcyzk identified on the exhibit, the parking lot where Leib attended the festival is on the right; and the school was separated from the parking lot by St. Louis Avenue and by the parish gym. (R. K10, 15-17) Thus, based on this exhibit, the school does not appear to be visible from St. Louis Avenue on *either* side of 103rd Street, and the State did not produce a single piece of evidence to establish otherwise at trial.

Moreover, a closer view of the gym that could be seen from the parking lot appears in exhibits below and on the next page. As the exhibits show, the gym did not reveal the presence of any nearby school, and was only named "Queen of Martyrs John Vitha Hall." (R. K21-22)

(Exh. P.E. 2, D.E. 2)

Finally, the specific parking lot that Leib entered across the street from John M. Vitha Hall also did not identify the existence of any nearby school. The only sign appearing in the lot, shown below (Exh. D.E. 5), contained information about Bingo, an activity Reverend Mikolajcyzk stated was only played by adults. (R. K24).

In short, without any evidence that Queen of Martyrs Fest was advertised as a school function, or that the school could be seen from the parking lot where Leib approached or attended the festival, no rational trier of fact could find the State proved Leib's knowing presence on

real property comprising any school beyond a reasonable doubt.

B. Even if Leib knew a school was located at the parish, no rational trier of fact could conclude he knew he was on real property comprising a school by remaining present on the parking lot across the street from that school.

Next, even if there had been any evidence that Leib knew a school was located on the Queen of Martyrs campus, no evidence was presented from which a rational trier of fact could conclude Leib knew he was *himself* on real property comprising a school by remaining present only on the parking lot across the street from that school.

Notably, the detective who investigated this case indicated on his police report that the premise type of this incident was "church, synagogue, or slash temple," without saying anything about any school. (R. K104) Even more tellingly, Irene Ahern Smith, who had worked as the business manager at Queen of Martyrs parish for 20 years, testified that this parking lot had been considered *church* property, not school property, for as long as she had worked there. (R. K99, 103) Other witnesses who worked for Queen of Martyrs parish also agreed that the parking lot was only occasionally used by the school, *i.e.*, for school drop-off and pick-up and occasional recess; the lot was also used for non-school purposes, including church overflow parking and parking for leagues who used the gym for athletic functions. (R. K18-20, 25-27, 32-33, 42, 101-02) There was also an *additional* parking lot on the parish campus, *directly adjacent to the school*. (R. K18) Thus, the parking lot adjacent to the school was likely viewed by the public as the school's parking lot, not the parking lot across the street from the gym.

Indeed, as explained in Argument I, *supra*, courts addressing this issue prior to this case have concluded "real property comprising any school" is property that *contains* a school, *not* non-contiguous land owned or used by a school. *See Stamps v. State*, 620 So. 2d 1033, 1033 (Fla. Ct. App. 1993); *Commonwealth v. Paige*, 768 N.E.2d 573, 573-74 (Mass. App. Ct. 2002); *State v. Peterson*, 490 N.W.2d 53, 53-54 (Sup. Ct. Iowa 1992). Though the appellate

court in this case determined otherwise, along with the trial court and prosecutor, they still disagreed on *why* the lot constituted real property comprising a school, as further explained in Argument I, *supra*. Thus, no reasonable layperson could be expected to know this lot constituted real property comprising any school.

At trial, the prosecution contended that the confusion on the nature of the parking lot was irrelevant because Reverend Mikolajcyzk provided the "definitive" answer that the lot was "part and parcel of the school." (R. K117-18) However, the State had to prove Leib's own knowledge that the parking lot comprised a school as a vital element of this offense. *See* 720 ILCS 5/11-9.3(a) (2015); *People v. Stork*, 305 Ill. App. 3d 714, 722-24 (2d Dist. 1999). Thus, the dispute amongst even the parish employees, as well as the investigating detective's characterization of the parking lot, was certainly relevant indeed crucial to assessing whether the State proved Leib knew he was on real property comprising a school.

Finally, as Justice Mikva noted in her dissent, the parties stipulated at trial (R. K74-75) that Leib was compliant with all the requirements of the sex offender registration laws for eight years prior to these events. *Leib*, 2020 IL App (1st) 170837-U, ¶46 (Mikva, J., dissenting). Nor did Leib reveal any guilty conscience when he was approached by a police officer at the festival. He did not run, but he gave his name to the officer and apparently admitted that he was a sex offender, even after the officer's search of Leib's name did not return that result. (R. K66-74) He then left the festival as requested. Leib's demonstrated compliance with his registration duties is one more fact and circumstance to be viewed alongside the conflicting evidence given on the nature of the parking lot at issue. There is no reason to believe that Leib would suddenly and willfully violate his requirements after complying with those requirements for close to a decade. For all these reasons, even if it could be rationally inferred that Leib knew there was any school located at Queen of Martyrs parish, no rational trier of fact could

conclude he knew he was on real property comprising that school by attending a festival in the parking lot across the street.

C. Neither the trial court nor the appellate court majority acted rationally in finding the State proved Leib's knowledge.

Finally, neither the trial court nor the majority of the appellate court issued a rational decision about Leib's knowing presence on real property comprising a school. First, the trial court found Leib guilty after doubting "how any reasonable person, especially a convicted sex offender," would not understand that he was in a "school zone" by attending Queen of Martyrs Fest. (R. K120-21) As explained in Argument I, *supra*, the court's "school zone" logic was unreasonable in and of itself. However, the court further misapplied the law by focusing on what it believed Leib *should* have known, rather than on what the State proved he did know.

In *People v. Nash*, 282 Ill. App. 3d 982 (3d Dist. 1996), the defendants were convicted of an offense making it unlawful to knowingly cut or appropriate any timber without the consent of the timber grower. *Id*. at 985. At trial, there was no dispute that the defendants knowingly cut down several trees without the owner's consent. The dispute centered on whether they knew those trees were located on property owned by the victim. *Id*. at 982. In finding the defendants guilty, the trial court pointed to all of the evidence that *should have* given them notice of the boundary locations of the properties at issue. *Id*. at 987. However, on appeal, the court reversed the defendants' convictions. It explained that "knowledge" in criminal prosecutions requires proof beyond a reasonable doubt of a "conscious awareness" of a particular fact; not merely what the defendant "should have known." *Id*. at 986-87. Here as well, the trial court inappropriately assumed Leib's knowledge based on what the court believed Leib should have known, rather than looking to what the State proved he actually did know. *Leib*, 2020 IL App (1st) 170837-U, ¶¶42-43 (Mikva, J., dissenting) (refusing to give deference to trial court's finding because court never made any proper factual finding that Leib had actual

knowledge that he was on school grounds, but only concluded he "*should* have known where he was") (emphasis in original).

The majority of the appellate court fell into the same trap. It held improperly that Leib "could" have inferred that the parking lot where he attended Queen of Martyrs Fest was real property comprising a school. *Leib*, 2020 IL App (1st) 170837-U, ¶¶31-33. Where conviction of a felony offense results in serious repercussions, it was not enough to find Leib guilty of a criminal offense based on what he *could* or *might* have known. *See People v. Jones*, 174 Ill. 2d 427, 429-30 (1996) (presumption of innocence cannot be overcome by speculation, conjecture, innuendo, or even probabilities). The State had to prove sufficient facts and circumstances to establish that Leib *would* know that fact, which the State failed to do. *See Frazier*, 2016 IL App (1st) 140911, ¶23.

Moreover, the facts and circumstances cited by the majority to conclude that Leib *could* have known he was on real property comprising a school were also unreasonable. Outside of the majority's unreasonable reliance on the festival flyer's reference to "St. Joe's Room," the majority also noted that the pastor at Queen of Martyrs testified the school and the church were one entity, and that the school used the parking lot at issue. *Leib*, 2020 IL App (1st) 170837-U, ¶31. However, unlike the parish pastor, Leib did not work for the parish. Nor did the State offer evidence that he was a member of the parish or had visited in the past. Yet even if he had, as explained above, his brother (a seven-year member of the church) and Ahern Smith (the 20-year business manager for the parish) believed the parking lot was church, not school, property. (R. K93, 99, 103)

The majority also determined Leib could have known he was on real property comprising a school because the festival contained children's rides, and children were present. *Leib*, 2020 IL App (1st) 170837-U, ¶¶32-33. However, children are often present at festivals in Chicago,

as are rides geared toward children. Yet, not all festivals and carnivals are located on real property comprising a school. *See Leib*, 2020 IL App (1st) 170837-U, ¶45 (Mikva, J., dissenting) ("...it is not surprising at all that children were present at a festival with rides and games designed specifically for them, and certainly a school is not the only place that children congregate"). To be clear, Leib was not precluded from attending festivals or carnivals where children were present, and nothing about the mere fact that children were present would have put Leib on notice that he was on real property comprising a school. *See People v. Haberkorn*, 2018 IL App (3d) 160599, ¶¶29-32 (section 5/11-9.3 "does not attempt to prohibit convicted sex offenders from being present at venues where children together with their parents congregate").

For these reasons, this Court should not defer either to the trial court or the appellate court in this case. Justice Mikva correctly refused to merely "assume that [Leib] knew that a festival that was being held in a parking lot, where there was no signage to indicate a school, was actually on [real property comprising any school]." So too should this Court.

D. Conclusion

For eight years, Donald Leib complied with all of the sex offender registration requirements imposed upon him. (R. K75) The State failed to prove beyond a reasonable doubt that he knowingly entered real property comprising any school by attending Queen of Martyrs Fest in a parking lot that had no school, and whose nature was disputed even by the employees who worked at Queen of Martyrs parish. Thus, this Court should reverse his conviction.

CONCLUSION

For the foregoing reasons, Defendant-Appellant Donald Leib respectfully requests that this Court reverse his conviction for knowingly being present as a child sex offender on real property comprising any school.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is 42 pages.

/s/Caroline E. Bourland
CAROLINE E. BOURLAND
Assistant Appellate Defender

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Donald Leib No. 126645

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2020 IL App (1st) 170837-U
No. 1-17-0837
Order filed September 30, 2020

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 17207
	)	
DONALD LEIB,	)	Honorable
	)	Kerry M. Kennedy,
Defendant-Appellant.	)	Judge presiding.

JUSTICE GRIFFIN delivered the judgment of the court.
Justice Connors concurred in the judgment.
Presiding Justice Mikva dissented.

ORDER

¶ 1 *Held*: Defendant's conviction for being a child sex offender in a school zone is affirmed where the property at issue fell within the statute's purview and the State established that he knew he was on restricted property.

¶ 2 Following a bench trial, defendant Donald Leib was found guilty of being a child sex offender in a school zone and sentenced to one year in prison. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the State failed to establish that he was on "real property comprising any school," and even if the property at issue were school property, the State failed to establish that defendant knew he was on restricted property. We affirm.

¶ 3 Following his arrest, defendant was charged with one count of violating section 11-9.3(a) of the Criminal Code of 2012 (Code) (720 ILCS 5/11-9.3(a) (West 2014)), in that he, a child sex offender, knowingly was on the real property of Queen of Martyrs School and knew that persons under the age of 18 were present.

¶ 4 Reverend Edward Mikolajczyk testified that he was the pastor of Queen of Martyrs Parish in Evergreen Park. The parish includes a church at 103rd Street and Central Park Avenue, a school with a connected gym at 3550 West 103rd, and a rectory at 10233 Central Park. There is a parking lot on 103rd and St. Louis Avenue (St. Louis parking lot), adjacent to the gym, which is school property. Between September 24 and September 26, 2015, the parish held a festival to raise funds for the church and school which included rides for children in the St. Louis parking lot.

¶ 5 During cross-examination, Mikolajczyk testified that he, along with a committee of parishioners, staged the festival. He admitted that a flyer advertising the festival did not state that it was a school function. A raffle was held as part of the festival, but was not directed by the school. The festival was "under auspices" of Queen of Martyrs and "people understand [it] as being the parish and the school fundraiser."

¶ 6 Defense counsel then showed Mikolajczyk several photographs of the buildings comprising the parish complex, which are included in the record on appeal. Mikolajczyk first identified a photograph of the "grounds of the parish and the school" which also showed the public streets surrounding the complex. The St. Louis parking lot is separated from the school and church by St. Louis Avenue, a public street. Students have recess in a parking lot next to the school or in the St. Louis parking lot. Directly across the street from the St. Louis parking lot is the gym, Queen of Martyrs John Vitha Hall (Vitha Hall). Mikolajczyk acknowledged that the school's name is not

displayed on the gym building. He also identified a sign on the corner of the St. Louis parking lot advertising bingo. The church controls the St. Louis parking lot and gives permission for its use. When defense counsel asked whether the school would have to ask permission to use the lot, Mikolajczyk responded that the school and the church were "synonymous," and the church would "take care of it."

¶ 7 The photographs show that the church is a block from the St. Louis parking lot. Moreover, the school building sits between the church and the St. Louis parking lot.

¶ 8 Kathleen Tomaszewski testified that in 2015 she was principal of Queen of Martyrs School which served prekindergarten through eighth grade. The festival was a fundraiser for the school and parish, and consisted of a carnival, games, food, entertainment, and raffle. The carnival and rides for younger children were in the St. Louis parking lot. St. Louis Avenue was blocked off and attractions were located in the alley between the school and convent, which led to another parking lot. She did not know defendant, he was not the parent or guardian of a student, and he was not given permission to come to the school.

¶ 9 During cross-examination, Tomaszewski acknowledged that the festival was open to the public, its proceeds supported the school and church, and the flyer advertising "Queen of Martyrs Fest" did not mention the school. She noted, however, that the flyer stated that children's games were located in the St. Joseph's room inside the school. While the sign in the St. Louis parking lot advertising bingo does not mention the school, the church gives some of the bingo proceeds to the school. Vitha Hall, which is separated from the St. Louis parking lot by a public street, houses both bingo and student gym activities. Tomaszewski told a defense investigator in August 2016 that the school did not currently use the St. Louis parking lot for recess, but for student dropoff and pickup,

parking for athletic events, scout meetings, and car washes. She did not believe there was a sign indicating that it was the lot where children were dropped off. As principal, Tomaszewski was permitted to use the parking lot at "any time."

¶ 10 Jeanne Cassidy, defendant's neighbor, testified that she knew that he was a registered sex offender. On September 26, 2015, she was at the festival with her husband and six-year-old son when she saw defendant across the street from the school gym, in the corner of the St. Louis parking lot, in front of a children's carnival ride. According to Cassidy, "hundreds" of children were present. Cassidy told her husband that she did not think defendant should be there since he was a sex offender, and her husband notified a Chicago police officer. Cassidy located a picture of defendant on her phone and showed it to the officer, who then spoke to defendant. She also made a report to the Evergreen Park Police Department. When Cassidy went to defendant's home the following day to tell him that she had reported him to the police, he said he understood her concerns and was at the festival with his brother's family.

¶ 11 Chicago police officer Daniel McGreal testified that he stopped by the "carnival held by the school" to see his family while on duty. After a woman shared concerns about defendant's presence, he approached defendant, asked for identification, and ran defendant's information. The search revealed no warrants and gave no further information about defendant's background. However, McGreal told defendant he should not be at the festival. Defendant agreed and left. McGreal only saw defendant in the St. Louis parking lot, not across the street where the gym, church, and school were located.

¶ 12 The State entered a stipulation that defendant was convicted of child abduction in case 06 CR 04312 and required to register as a child sex offender. Defense counsel then stated that the conviction was for "attempted luring."

¶ 13 At the close of the State's case, the defense moved for a directed finding, arguing that the State had not established beyond a reasonable doubt that defendant knew that the St. Louis parking lot was school property, and "for all appearances" the parking lot was church property. Defense counsel argued that the St. Louis parking lot "at best" may have been used by students, but that "dual usage" did not suggest that the lot was school property. The State responded that the festival was a school fundraiser on property used for school functions. The trial court denied the motion.

¶ 14 The defense presented the testimony of Robert Pellegrini, the festival chairperson. Pellegrini identified a photograph of "the parish parking lot" on St. Louis Avenue with the bingo sign on the corner. He acknowledged that the flyer did not state that the festival was for a "school purpose," and described the St. Louis parking lot as the "school, church, parish parking lot."

¶ 15 Robert Leib, defendant's brother, testified that he invited defendant to attend the festival. Robert is a Queen of Martyrs parishioner. He identified a photograph of the St. Louis parking lot as "the church parking lot," and believed it was church, not school, property. While at the festival, Robert and defendant were approached by a police officer who asked defendant if he was a sex offender. After running defendant's identification, the officer told them to leave because people were uncomfortable. During cross-examination, Robert acknowledged that defendant's status as a sex offender prohibited him from being around children in a school area but asserted that the festival was a "church carnival." During redirect, Robert testified that he would not have brought defendant if he did not believe the festival was a church function.

¶ 16 Irene Smith, the business manager for Queen of Martyrs parish, testified that the church owned the St. Louis parking lot. The church and the school cannot be differentiated because the two entities share the same federal identification number. Bingo players and people attending functions in the gym park in the St. Louis parking lot.

¶ 17 The defense entered a stipulation that the Evergreen Park Police Department incident report in this case identified the premises as "church, synagogue or slash temple." The defense also moved to admit its exhibits, including the photographs of the parish complex, into evidence, which the court permitted.

¶ 18 In finding defendant guilty, the court noted that although the defense theory of the case was that a difference existed between school and church property, Mikolajczyk was "pretty clear" that it was "all one." The court also noted that section 11-9.3(a) of the Code included the phrase "school zone," and that testimony established St. Louis Avenue was blocked off for the festival, which to the court meant that the St. Louis parking lot was part of the school zone for the day.

¶ 19 Defendant filed a motion and memorandum in support of a new trial alleging the State failed to prove beyond a reasonable doubt that the St. Louis parking lot was real property comprising a school and that defendant knew it was such. The trial court denied the motion. After a hearing, the court sentenced defendant to one year in prison.

¶ 20 On appeal, defendant contends that his conviction should be reversed because the State did not prove beyond a reasonable doubt that the St. Louis parking lot was "real property comprising any school." He further argues that even if the St. Louis parking lot were school property within the meaning of the statute, the State failed to prove his knowledge beyond a reasonable doubt.

¶ 21 When a challenge is made to the sufficiency of the evidence at trial, a reviewing court must determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. In making this determination, we review the evidence in the light most favorable to the State. *Id.* All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). A trier of fact is not required to disregard inferences which flow normally from the evidence before it or seek out any "possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Campbell*, 146 Ill. 2d 363, 380 (1992).

¶ 22 As a child sex offender, defendant is prohibited from knowingly being present in "any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity when persons under the age of 18 are present," unless he is attending a conference at a school concerning his own child. 720 ILCS 5/11-9.3(a) (West 2014).

¶ 23 Defendant does not contest that he is a child sex offender or that he is barred from being present on "real property comprising any school"; rather, he contends that the St. Louis parking lot does not qualify within the meaning of the statute because it is separated from the school and gym by a public street. The State, on the other hand, contends that the St. Louis parking lot is real property comprising part of Queen of Martyrs school. The parties agree that the statute does not state whether a parking lot is real property comprising a school and that no Illinois court has answered the question. Consequently, before reaching defendant's challenge to the sufficiency of the evidence, we consider whether the St. Louis parking lot may qualify as "real property comprising any school" as a matter of law.

¶ 24 This issue presents a question of statutory construction which we review *de novo*. *People v. Lloyd*, 2013 IL 113510, ¶ 25. When construing a statute, our primary objective "is to ascertain and give effect to the intent of the legislature," and the "most reliable indicator of legislative intent is the language of the statute." *People v. Boyce*, 2015 IL 117108, ¶ 15. "In the event there is an ambiguity, the rule of lenity requires that it be resolved in a manner that favors the defendant; however, this rule must not be stretched so far as to defeat the legislature's intent." (Internal quotation marks omitted.) *Id*. "In the course of statutory construction, we may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Id*.

¶ 25 Defendant is correct that the statute does not define what is included in "real property comprising any school." See 720 ILCS 5/11-9.3(a) (West 2014). The Code, however, defines a "school" as "a public, private, or parochial elementary or secondary school, community college, college, or university and includes the grounds of a school." 720 ILCS 5/2-19.5 (West 2014). "Grounds" are defined as "the area around and belonging to a house or other building." Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/grounds (last visited Aug. 13, 2020).

¶ 26 Accordingly, because the Code's definition of school includes its grounds, *i.e.*, the area around and belonging to school buildings, we conclude that the parking lot of a school would qualify as part of the school grounds pursuant to the Code. Therefore, a school parking lot qualifies as "real property comprising any school" under section 11-9.3(a). Applying the statute to a school's parking lot, where students congregate, works to achieve the statute's purpose to keep child sex offenders away from school grounds where children congregate. See *Boyce*, 2015 IL

117108, ¶ 15 (when construing a statute, a court "may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another"). To construe the statute such that parking lots are not included in school grounds, and therefore, not off-limits to child sex offenders, would end the statute's reach at the door to the school and contradict the definition of school which includes its grounds.

¶ 27 In his brief, defendant concedes that a school parking lot could qualify as "real property comprising any school," but only in those cases where the parking lot is contiguous to the school building. We note, however, that section 11-9.3(a) of the Code does not include a requirement that all real property comprising a school be contiguous, and we decline to read such a requirement into the statute. See *People v. Shinaul*, 2017 IL 120162, ¶ 17 ("Absent express language in the statute providing an exception, we will not depart from the plain language and read into the statute exceptions, limitations, or conditions that the legislature did not express."). To exclude the portions of school grounds that are separated from physical buildings by public streets would be counter to the statute's intent, to prevent the presence of child sex offenders on school grounds where children congregate, solely based on the fact that certain grounds do not touch school buildings and fail to recognize the reality of urban school campuses.

¶ 28 Having determined that a school parking lot is "real property comprising any school" under section 11-9.3(a) of the Code, we now turn to whether the evidence at trial established that the St. Louis parking lot qualified within the meaning of the statute. Here, taking the evidence in the light most favorable to the State, a rational trier of fact could have found that the St. Louis parking lot qualified when evidence established that it was used for student dropoff and pickup, recess, and parking for athletic events, scout meetings, and car washes. Although defendant contends that the

fact that the St. Louis parking lot was separated from the school buildings by a public street was fatal to the State's case, we disagree. As discussed above, there is no requirement in the Code that school grounds be contiguous, and we decline to read such a requirement into the statute.

¶ 29 In the alternative, defendant contends that even if the St. Louis parking lot were "real property comprising any school," the State failed to prove that he knowingly violated the statute. Defendant again notes that the St. Louis parking lot is across a public street from the school buildings and had a sign advertising bingo. He further argues that the festival flyer did not indicate that it was a school event. Defendant concludes that no rational trier of fact could have found that he was consciously aware that the St. Louis parking lot was "real property comprising any school."

¶ 30 For purposes of section 11-9.3(a) of the Code, "knowledge" means that a defendant was "consciously aware" that he was on real property comprising a school, or that he was aware "of the substantial probability" that he was on such property. 720 ILCS 5/4-5(a) (West 2014). Knowledge is a question of fact for the trier of fact to decide. *People v. Fernandez*, 204 Ill. App. 3d 105, 108 (1990). A defendant's knowledge is generally established by circumstantial evidence rather than direct proof. *People v. Weiss*, 263 Ill. Ap. 3d 725, 731 (1994). In other words, a defendant's knowledge that he was present on real property comprising a school "can be inferred from the surrounding facts and circumstances, which would lead a reasonable person to believe" such. *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 23.

¶ 31 In this case, a rational trier of fact could have found that defendant knew that he was present on real property comprising a school when Queen of Martyrs Parish's pastor and business manager both testified that the school and church were one entity and the parish operated an elementary school on the grounds. Moreover, although the flyer advertising the festival did not explicitly state

that it was a function to benefit both the church and school, the flyer did state that children's games were available in the St. Joseph's room, which was located in the school. Considering that the festival's purpose was to raise funds for a parish that included a parochial elementary school, and "hundreds" of children were present, a reasonable person could infer that the parking lot where the rides for young children were located was school property. *Id*.

¶ 32 We thus agree with the trial court's determination that, considering the rides and the many children present at the festival, defendant had knowledge that the St. Louis parking lot was real property comprising a school. Although defendant's brother testified that he believed the festival was a church function and there was evidence that the St. Louis parking lot did not bear "school" signage, a trier of fact is not required to disregard the inferences that normally flow from the evidence or to seek out all possible explanations consistent with a defendant's innocence and elevate them to reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60.

¶ 33 Although the dissent concludes that "there is no way" that defendant could have known that the St. Louis parking lot was "real property comprising any school," the surrounding facts and circumstances in this case would have lead a reasonable person to believe that he was on real property comprising a school. Here, the school was situated between the St. Louis parking lot and the church, such that the church was a block away from the St. Louis parking lot. Additionally, the festival flyer advertised children's activities in a room located in the school, the street separating the St. Louis parking lot from Vitha Hall and the school was closed during the festival, and the St. Louis parking lot hosted carnival rides for children. Moreover, although defendant's brother testified that he believed the festival was a church function, Mikolajczyk testified that the festival was "underst[ood] as being the parish and the school fundraiser." Considering the circumstances

of this case, we cannot say that no trier of fact could found that defendant was aware of the substantial probability that the St. Louis parking lot was real property comprising a school.

¶ 34 We reverse a conviction only when the evidence was "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Brown*, 2013 IL 114196, ¶ 48. This is not one of those cases. Accordingly, we affirm defendant's conviction.

¶ 35 For the forgoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.

¶ 37 Mikva, Presiding J., dissenting.

¶ 38 I agree with the majority that a rational trier of fact could have found, based on the evidence presented and despite the conflicting testimony, that the parking lot where the festival occurred was part of the grounds of the school and that, therefore, Mr. Leib was prohibited from being there when "persons under the age of 18 [were] present." 720 ILCS 5/11-9.3(a) (West 2014).

¶ 39 The trial judge's actual finding was that Mr. Leib was in a "school zone," which is not what the statute requires, although "school zone" is in the title of the statute. Instead, the statute prohibits Mr. Leib from being present on "real property comprising a school" and the Code defines "school" as "a public, private, or parochial elementary or secondary school, community college, college, or university and includes the grounds of a school." 720 ILCS 5/2-19.5 (West 2014). The majority apparently equates "school zone" and school "grounds," and I can accept this equivalency along with the majority's conclusion that the evidence supports the trial court's factual finding that the festival took place on "real property comprising a school."

¶ 40 However, as both the majority and the trial court acknowledge, Mr. Leib was not in violation of the statute unless the evidence also showed that he *knew* that he was on school grounds

when he was present with his brother at the festival. On this necessary element, there was no evidence and no proper factual finding by the court to which we should defer.

¶ 41 There was no testimony that any sign on the school, at the festival, or on the festival flyer would have advised Mr. Leib that he was on school property. Indeed, the witnesses themselves disagreed about whether the parking lot where the festival occurred was part of the school or part of the church. Irene Smith, the business manager for the church, testified that the parking lot had been considered "church" property for the 20 years she had worked there. The police report also listed the location of the festival as a "church synagogue or temple." The fact that there was a genuine disagreement by disinterested witnesses as to whether or not this parking lot was part of a school or part of a church undermines any suggestion that Mr. Leib knew that this was school property. And, of course, Robert Leib, testified that he had invited his brother to attend the festival believing that the parking lot where the festival occurred was church, rather than school, property. In short, there is simply no way that Mr. Leib can be charged with knowledge of something which was not marked by any signage and on which even the witnesses and the church employees could not agree.

¶ 42 The trial court's finding, to which we would, of course, generally defer, simply is not a finding that the evidence demonstrated that Mr. Leib had this knowledge. Instead, the trial court found that the parking lot was part of the "school zone," and then concluded that it "did not see how any reasonable person, especially a convicted sex offender, would not realize that."

¶ 43 This was not a factual finding that Mr. Leib had actual knowledge that he was on school grounds. Rather, it appears to be a conclusion by the trial court that Mr. Leib *should* have known where he was. As we have made clear, however, where, as here, a criminal statute requires that the

defendant act with knowledge: "[k]nowledge" is not the same as "should have known." *People v. Nash*, 282 Ill. App. 3d 982, 986 (1996).

¶ 44 The majority concludes that Mr. Leib's knowledge that he was present on real property comprising a school "can be inferred from the surrounding facts and circumstances, which would lead a reasonable person to believe" that he was on school property, citing our decision in *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 23. However, this case is a stark contrast to *Frazier*. In that case, we noted:

> "The subject motor scooter did not have a license plate, and the ignition had been removed. In describing the missing ignition, [a witness] testified that the motor scooter was 'busted straight down the middle with a big hole' where the ignition should have been. Any reasonable person would have noticed a big hole in the middle of the motor scooter and would have concluded that a motor scooter with a busted out ignition and no license plate, was stolen." *Id.* ¶ 24.

¶ 45 The only circumstance that the majority can point to here as making a necessary condition similarly obvious is the fact that many children were present. But it is not at all surprising that children were present at a festival with rides and games designed specifically for them, and certainly a school is not the only place that children congregate. The majority also cites the fact that a flyer indicated that these games for children were in the St. Joseph's room and that there was testimony that the St. Joseph's room is in the school. To me this only underscores the fact that the evidence did not show that the flyer said anything about the St. Joseph's room being in a school, that Mr. Leib ever went near the St. Joseph's room, that Mr.

Leib ever came in contact with the school building itself, or that he saw any sign that indicted he was in or even near a school.

¶ 46 In my view, both the trial court and the majority are simply assuming that Mr. Leib knowingly came onto school grounds. Such an assumption—even if it were rational—cannot take the place of evidence. Moreover, I do not find it to be a rational assumption. Mr. Leib was compliant with the draconian requirements of the sex offender registration laws for eight years. One thing he certainly knew was that school grounds were off limits to him—while festivals were not. I am unwilling to assume that he knew that a festival that was being held in a parking lot, where there was no signage to indicate a school, was actually on school grounds. I would reverse this conviction.

¶ 47 I respectfully dissent.

No. 1-17-0837

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DONALD LEIB, Defendant-Appellant	)))))))))	Appeal from the Circuit Court of Cook County 15 CR 17207 Honorable Kerry M. Kennedy Judge Presiding

This case is before the court on defendant Donald Leib's petition for rehearing. It is hereby ORDERED:

Defendant's petition for rehearing is DENIED.

ORDER ENTERED

OCT 21 2020

APPELLATE COURT FIRST DISTRICT

Justice Maureen E. Connors MEC

Justice

John Griffin

Justice

Justice

I would grant the petition for reharing.

Mary L. Mikva

117970

CRIMINAL DIVISION

17-0837

PLE OF THE STATE OF ILLINOIS)
)
-vs-)
DONALD LEIB)

No. 15CR1720701
Trial Judge: Kennedy
Attorney: HALLAND

NOTICE OF APPEAL

Appeal is taken from the Order or judgment described below:

Appellant's Name: DONALD LEIB
I.R. Number: 1531561 DOB:
Appellant's Address: IDOC
Appellant's Attorney: **State Appellate Defender**
203 N. LaSalle St, 24th Floor
Chicago, IL 60601

Offense: Sex Offender Ch School Zone
Judgment: Guilty of Guilty plea
Date of Judgment or Sentence: 9-30-16
Sentence: 7 Years IDOC

Jack F. Hallahan on behalf of
APPELLANT or ATTORNEY of DONALD LEIB

VERIFIED PETITION FOR REPORT OF PROCEEDINGS, COMMON LAW RECORD AND FOR APPOINTMENT OF COUNSEL ON APPEAL FOR INDIGENT DEFENDANT

FILED
MAR 24 2017
CLERK OF THE CIRCUIT COURT
DOROTHY BROWN

nder Supreme Court Rules 605-608, Appellant asks the Court to order the Official Court Reporter to transcribe an original and opy of the proceedings, file the original with the Clerk and deliver a copy to the Appellant; order the Clerk to prepare the Record n Appeal and to appoint counsel on appeal. Appellant, being duly sworn, says that at the time of his/her conviction he/she was nd is now unable to pay for the Record or to retain counsel for appeal.

Jack F. Hallahan on behalf of
APPELLANT or ATTORNEY DONALD LEIB

UBSCRIBED and SWORN TO this 30 day of March, 2017

NOTARY PUBLIC

RECEIVED
APR 21 2017
PARALEGAL DEPARTMENT
Office of the State Appellate Defender
1ST DISTRICT

ORDER

T IS ORDERED THAT THE STATE APPELLATE DEFENDER is appointed as counsel on appeal and that the Common Law Record and Report of Proceedings be furnished to Appellant without cost.

DATES TO BE TRANSCRIBED: 12-5-16, 1-9-17 and 3-30-17

C0000106

ORDER DATE: ENTER: JUDGE

No. 126645

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- DONALD LEIB, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-17-0837. There on appeal from the Circuit Court of Cook County, Illinois, No. 15 CR 17207. Honorable Kerry M. Kennedy, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

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Mr. Donald Leib, 10320 S. Albany Ave, Chicago, IL 60655

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 29, 2021, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court/s electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Marquita S. Harrison
LEGAL SECRETARY
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